



SAME-SEX MARRIAGE: WHY INDIA CALLS FOR SPECIFIC LEGISLATION?

Radha Kumari* Om Kumar Pandey*

ABSTRACT

*Why does India ask for a specific law on same-sex marriage? Debate on equal-lingo marriages in India highlights constitutional rights, social norms, and tension between the legislative authorities. While the Supreme Court reduced homosexuality in **Navtej Singh Johar v India (2018)**,¹ LGBTQ+ rights have recognized the rights of dignity and equality; the legal recognition of equal-lingo marriage is absent. Unlike many countries, where marriage equality was achieved through judicial rules or legislative amendments, India's social-nature scenario requires specific laws. Uniform unions are not clarified in the individual laws of the country ruled by religious-based laws such as **the Hindu Marriage Act and Muslim Personal Laws. The Special Marriage Act (1954), a secular option, also lacks provisions for non-heterogeneous couples, which is required. Legislative intervention. Recently, the Supreme Court's verdict (2023) refused to legalize same-sex marriage, emphasizing that such a change comes under the purview of Parliament. The verdict states that marriage is a social-legal institution that requires extensive social consent and policy-making. It also accepted the need for security, like civil unions and partner rights, and urged the government to find out the legal structure. A specific law will provide clarity on adoption, heritage, taxation, and fickle rights, ensuring that LGBTQ+ couples receive equal protection under the law. In addition, equal-sex partners face legal voids in essential cases such as medical consent and property rights. Given the diverse legal structures and social sensitivity of India, a well-disconnected legislative approach piece will provide a more stable and inclusive solution than judicial interventions.***

*BBA LLB, SECOND YEAR, SISTER NIVEDITA UNIVERSITY, KOLKATA.

*LLB, THIRD YEAR, TECHNO INDIA UNIVERSITY, KOLKATA.

¹ Navtej Singh Johar v India (2018)

INTRODUCTION

Same-sex marriage is the legal recognition of a marriage between two individuals of the same gender. Equal-sex marriage in India requires a specific law. The discourse around same-sex marriage in India has attracted significant attention in recent years, especially given the landmark verdict of the Supreme Court. Although this decision was a historic step towards LGBTQ+ rights, it did not give legal recognition to the unions of the same lingo. The absence of a legal framework for equal-sex marriage in India has resulted in significant challenges for LGBTQ+ individuals, who continue to face discrimination in matters such as heritage, adoption, medical rights, taxation, and social security benefits. It has given rise to rising demands for a dedicated law that gives equal marital rights to equal lingo joints. India's current legal system does not recognize same-sex marriage. The current marriage law, including the Hindu Marriage Act 1955², the Special Marriage Act 1954³, and other religious personal laws, is based on an odd structure that defines marriage between a man and a woman as a union. Is. Lack of legal recognition means that equal-lingo couples cannot avail of fickle rights such as adoption, tax profit, pension entry, or heritage rights. This legal vacuum leaves them insecure and excluded from the original citizen freedom blissful by heterosexual married couples. The issue of equal-sex marriage further came into contact with *Supriyo Chakravarti v Union of India*,⁴ Where the Supreme Court ruled that uniform-sex marriages come under the ambit of the legislature Instead of the judiciary. The court acknowledged discrimination faced by LGBTQ+ individuals but ensured that changes in marriage laws should be done through a democratic legislative process.

LGBTQ RIGHTS

Lesbian, gay, bisexual, transgender, and queer (LGBTQ) rights in India have expanded in the 21st century, although most of India's progress on LGBT rights has come from the judiciary and not from the legislature. LGBTQ people continue to face legal and social challenges not experienced by non-LGBTQ people in India. India has no legal ban against gay sex. Equal-sex couples have some limited cohabitation rights, known as live-in relationships in colloquial language. However, India currently does not provide general law marriage, equal-sex marriage,

² Hindu Marriage Act 1955

³ Special Marriage Act 1954

⁴ *Supriyo Chakravarti v Union of India* (2023)

civil union, or the Disgraces of Transgender Individuals (Security of Rights) Act, 2019⁵. The self-cut gender identity of the right of the change can be issued by government agencies once the new identity document confirms the change by a relevant medical officer. Transgender citizens have a constitutional right to register themselves under the third gender. Additionally, some state housing programs protect a traditional third-gender population in South Asia and offer welfare benefits, pension schemes, free operations in government hospitals, and other programs to help them. Are designed. According to Census 2011, there are about 480,000 transgender people in India. Since 2010, LGBTQ people in India have received tolerance and acceptance in society. A 2023 Pew Research Center poll found that 53% of Indians supported the classification of equal-lingo marriage, while 43% were opposed. According to research in 2024, 79% of gay men and 44% of bisexual men have suffered oral, physical, or any other type of violence. Muslim respondents were likely to face violence more than respondents whose religion was Hindu, 2.6 times higher, and the respondents who were out about their sexuality in public were five times more likely to face violence than those who were out about their sexuality publicly.

HISTORY REGARDING SAME-SEX MARRIAGE

There were no legal restrictions on homosexuality or transsexuality for the general population before the early modern period and colonialism. However, some religious moral codes [which?] Forbids sexual misconduct between priests and the upper class of monks (both of heterosexual and gay nature), and religious codes of foreign religions such as Christianity and Islam forbid homosexuality among their followers.

Hinduism: Hinduism describes a third gender that is equal to the other sexes, as documented in ancient Hindu and Buddhist medical texts. The word “third gender” is sometimes seen as a particularly South Asian world, and this third penis is also found in the whole of South Asia and East Asia. There are some characters in the Mahabharata, according to some versions of the epic, changing their penis like Shikhandi, sometimes asking to be born as a woman, but identifying as a man and eventually a woman. Marries BahuChara is the goddess of mother breeding, worshipped by Hijras as her patron. Naradasmati and Sushruta Samhita, two important Sanskrit texts related to religion and therapy, respectively, refuse to marry homosexuality unchanged and homosexuals to marry a partner of the opposite sex.

⁵ Disgraces of Transgender Individuals (Security of Rights) Act, 2019

Naradasmata has listed fourteen types of Pandas (men who are impotent with women); these include Mukhebagā (men who have oral sex with other men), Seva kaka (men who enjoy sex with other men), and intended (the voyeur who sees other men getting entangled in sex). A Sanskrit text on human sexuality, and work formulas, uses the word Tritiya-Prakiti to define men with desires and describes their practices in great detail. Similarly, the work formula has described homosexuals Svairini, who are engaged in aggressive love with other women), bisexuals (referred to as kami or paksha), transgender, and intersex people.

Ancient Hindu gurus often offered social guidance, but it was usually not adopted in general law and custom and often referred to conduct for the upper class of monks and priests instead of people. Sushruta Samhita and Charaka Samhita further said on the issue of homosexuality, saying that homosexuals are imagined when the father's semen is scary and transgender people are imagined when the father and mother are during sexual intercourse. Reverse roles are Pushayita, "woman on top". In Manu Smriti, there are proposals for various punishments for some acts of gay and heterosexual sex. A mature woman was punished by having her head shaved or two fingers cut off to have sex with a girl and was also designed to ride on a donkey. The Manu smriti decided that a bull cart was a source of gay or heterosexual coupling ritual pollution. Scholars suspect that the Manu smriti law was implemented before colonialism, after which it became the basis of British colonial law for Hindus (parallel to Sharia law for Muslims).

The Hindu Khajuraho Temple, which is famous for its erotic idols, has many depictions of gay activity. Historians have long argued that pre-colonial Indian society did not criminalize equal relationships, nor were such relationships seen as immoral or sinful. Hinduism has traditionally depicted homosexuality as natural and joyful, although some texts include Prohibitory orders against homosexuality, especially among priests. Pali canon of Buddhism, the code of conduct for the union monks and the nuns, forbids both gay and heterosexual relations, and the acts of soft gay sex (such as masturbation and interfemoral sex) mustn't be punished, but punishment should not be met, but it should be accepted. Best. The Pali Canon was written in Sri Lanka on a large scale, but based on Buddha's teaching in India.

Mughal Empire: Under Genghis Khan, the Mongol Empire imposed anti-homosexual laws throughout the empire and presented harsh discrimination against LGBTQ in most parts of Asia, which includes derivatives such as Yuan China and the Mughal Empire. During the Mughal Empire, several already existing Delhi Sultanate laws were added to Fatwa-e-Almagiri,

which made many types of punishments compulsory for homosexuality. These may include 50 lashes for a slave, 100 for a free Kafir, or death by stoning for a Muslim.

British Empire: The codification of criminalization of gay activity was implemented by the British in Section 377, which stood for more than 70 years after Indian independence. P sued Sodomi's capital crime in Portuguese India, but not gay activity. While British Raj gave anal sex and oral sex (both heterogeneous sex and gays. Section 377 committed an offense under The Indian Penal Code⁶, voluntarily made it a crime for a person to have "intercourse against the order of nature.". Scholars have also argued that the original intention of Section 377 was to act as a means by which the British Raj could carry forward the police and control the body of the colonial subject. In the morality of the colonial Victorian era, these subjects were erotically seen as deformed and needed to be implemented. In 1884, a court in North India ruled on Hijra's prosecution, remarking that a physical examination of the accused revealed "a habitual catamite mark" and the police's wish was appreciated ". Check these disgusting practices" In 1871, the British labelled the eunuch population as a "criminal tribe."

RECOGNITION OF SAME-SEX MARRIAGE

India provides some legal recognition of gay partnerships, as live-in relationships and coitus are legal according to the judiciary. It does not provide legal marriage, general law for marriage, or civic unions. Although same-sex couples can gain rights and benefits as a live-in couple according to the Supreme Court of India. Administrative Tribunal in August 2022. Some companies provide services to homosexuals in live-in relationships, such as financial services and healthcare services. Equal-sex couples married in traditional Hindu celebrations; However, these marriages were not able to be registered and couples do not get equal rights and benefits, which are in the form of heterosexual married couples. Buddhism considers marriage to be a secular issue or a social contract, and therefore not a religious matter. There is no official marriage service, and marriage customs are often adopted by local cultural traditions; for example, Andy Fian, argues that prohibition against gay marriage in conferences affects Chinese Buddhism. May have done

Since 2010, courts in many states, including Gujarat, Himachal Pradesh, Kerala, Odisha, Punjab, Uttar Pradesh, and Uttarakhand, have ruled on a personal basis for same-sex couples

⁶ Indian Penal Code 1860

(also known as “live-in relationships”). Is not illegal and deserves legal protection. It often enters a limited heritage benefit from the family or police protection only. In 2022, the Supreme Court gave limited equal rights to those in live-in relationships, while gay live-in couples were recognized as part of a family unit. On 17 October 2023, the Supreme Court of India unanimously voted against the same methodology—sex marriage—but under the Constitution, the LGBTQs reiterated the rights of citizens and met the challenges of the Parliament or State Legislative Assembly. “Empower to enforce your laws for. Community and regulated rights. The ruling government, the ruling government of the BJP/NDA status on the recognition of equal-lingo relations, is to address “human concerns” about same-lingo couples in the context of Hinduism. Sources said that the recognition of equal-sex marriage will require support from all religious groups.

CONSTITUTIONAL CONSIDERATION FOR LEGALIZING SAME-SEX MARRIAGE

Right to Equality and Non-discrimination: Article 14 of the Indian Constitution⁷ promises equality before the law, and Article 15⁸ forbids discrimination on grounds of sex. Withholding marriage rights from homosexual couples arguably goes against these provisions by treating them differently from heterosexual couples.

Right to Life and Personal Liberty: Article 21⁹ safeguards the right to life and liberty. The Supreme Court has construed this to encompass the right to dignity, autonomy, and family life. Denying same-sex couples the recognition of marriage violates these basic rights.

Freedom of Expression and Association: Under Article 19¹⁰, Indian citizens enjoy freedom of expression and association. Prohibiting Same-sex marriage indirectly restricts the freedom of LGBTQ+ individuals to express themselves and enter into legally sanctioned relationships.

SOCIETAL AND CULTURAL ATTRIBUTES TOWARDS SAME-SEX MARRIAGE

Historical and Religious Context: Indian society has historically displayed tolerance toward diverse sexual identities, as seen in ancient texts and temple sculptures. However, Colonial-era

⁷ Constitution of India 1950, art 14

⁸ Constitution of India 1950, art 15

⁹ Constitution of India 1950, art 21

¹⁰ Constitution of India 1950, art 19

laws and Victorian moral codes have influenced contemporary attitudes, leading to resistance against LGBTQ+ rights.

Public Opinion and Progressive Shifts: Though there is opposition from conservatism, public opinion is slowly changing. Younger city dwellers and corporate houses favour LGBTQ+ rights, and the legal recognition of same-sex marriages is being asked for. Still, traditional and religious organizations continue to be a major hurdle.

WHY INDIA NEEDS SPECIFIC LEGISLATION?

Ensuring Legal Clarity and Protection: Without an explicit legal regime, same-sex couples are under a cloud of legal uncertainty about inheritance, taxation, insurance, and parental rights. Enactment of specific legislation can offer a systematic and enforceable legal system safeguarding LGBTQ+ families.

Preventing Judicial Overreach: Though courts are essential in protecting rights, laws on marriage are generally a matter of legislation. In-depth legal reform through parliament can guarantee democratic legitimacy and avert piecemeal judicial interpretation.

Economic and Social Benefits: Same-sex marriage legalization has the economic advantages of increasing tourism, real estate, and financial planning sectors. Sociologically, it promotes equality and decreases discrimination, resulting in enhanced mental health benefits for LGBTQ+ individuals.

CHALLENGES OF PASSING SAME-SEX MARRIAGE LEGISLATION

The journey to pass same-sex marriage legislation has been intricate and often fraught with conflict in various countries and regions. While there is increasing acceptance of LGBTQ+ rights globally, numerous legal, political, religious, and societal obstacles have turned the legalization of same-sex marriage into a challenging and extended battle. Here are some of the key challenges encountered in this process.

Legal and Constitutional Barriers: In many countries, constitutions define marriage strictly as a union between a man and a woman, complicating the passage of same-sex marriage laws without constitutional amendments. Changing a constitution usually requires a supermajority in the legislature or a public referendum, both of which can be difficult to secure, especially in

conservative societies. Furthermore, some nations have laws that criminalize same-sex relationships, which must be repealed before any consideration of marriage equality can take place.

Political Opposition and Partisan Divides: The push for same-sex marriage often becomes a highly charged political issue, splitting political parties. In governments led by conservative factions, opposition parties may resist altering traditional definitions of marriage, fearing backlash from their voter base. Politicians might also shy away from taking a clear position on same-sex marriage due to worries about alienating religious or socially conservative supporters. Even when public sentiment leans toward supporting same-sex marriage, lawmakers may hesitate to act because of pressure from powerful interest groups.

Religious Resistance: Religious institutions significantly influence societal values, and many religious leaders and organizations actively oppose same-sex marriage. They contend that marriage should adhere to traditional religious teachings, which typically define it as a sacred union between a man and a woman. This resistance can be particularly pronounced in countries where religious institutions hold considerable sway over public opinion.

Social and Cultural Attitudes: In societies where conservative cultural norms are deeply rooted, same-sex marriage can be perceived as a challenge to traditional family values. This is particularly true in many areas of Africa, the Middle East, and parts of Asia, where LGBTQ+ rights are often considered taboo, and same-sex relationships may be stigmatized or even criminalized. Addressing this cultural resistance necessitates significant advocacy, public education, and changes in generational perspectives.

Judicial Challenges and Legal Battles: Even after legislation is enacted, it frequently encounters legal challenges from opposition groups who claim that such laws infringe on religious freedom, parental rights, or conventional definitions of marriage. Lawsuits and appeals can postpone implementation, leading to extended uncertainty. In some instances, courts may invalidate same-sex marriage laws, forcing lawmakers to restart the legislative process.

Public Referendums and Opposition Movements: In certain countries, governments have subjected same-sex marriage legislation to public votes, which can have mixed outcomes. While some referendums have resulted in victories for marriage equality, others have upheld

bans on same-sex marriage due to vigorous opposition campaigns. Well-funded anti-LGBTQ+ organizations often leverage misinformation to influence public opinion, complicating the efforts of pro-equality movements.

SOME IMPORTANT CONSTITUTIONAL CASE LAWS

In India, same-sex marriage is not legally recognized as of 2024. However, several landmark cases have significantly influenced the legal landscape regarding LGBTQ+ rights.

Naz Foundation v. Govt. of NCT of Delhi¹¹: The Delhi High Court decriminalized homosexuality by interpreting Section 377 of the IPC¹² as a violation of fundamental rights. This decision was later overturned by the Supreme Court in *Suresh Kumar Koushal v. Naz Foundation* (2013).

Navtej Singh Johar v Union of India (2018): The Supreme Court unanimously invalidated Section 377, decriminalizing consensual same-sex relations and affirming LGBTQ+ rights under Articles 14¹³, 19¹⁴, and 21 of the Constitution.¹⁵

Supriyo Chakraborty v. Union of India (2023): In a ruling by a five-judge bench, the Supreme Court declined to legalize same-sex marriage, stating that this matter falls within the legislature's jurisdiction. Nevertheless, the court highlighted the necessity for non-discriminatory policies and recommended legislative reforms.

CONCLUSION

In conclusion, same sex marriage is a vital advancement for equality, affirming the rights and dignity of LGBTQ+ individuals. Legalizing same sex marriage fosters inclusivity, fortifies families, and supports essential human rights. Although there is still opposition in certain societies, the increasing global acceptance reflects progress toward a more equitable world. By persistently advocating for fairness and respect, we approach a future where love, commitment, and marriage are available to everyone, regardless of gender or sexual orientation.

¹¹ *Naz Foundation v. Govt. of NCT of Delhi* (2009)

¹² Indian Penal Code 1860, s 377

¹³ Constitution of India 1950, art 14

¹⁴ Constitution of India 1950, art 19

¹⁵ The Constitution of India 1950, art 21